

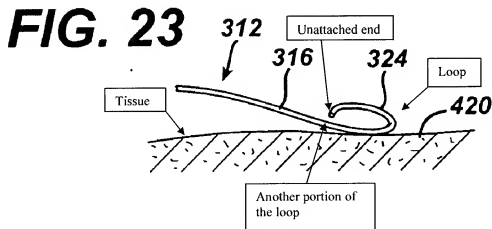
Remarks

The claims were amended in accordance with the amendments above. The amendments to the claims are being made merely to clarify the invention. All of the amendments are fully supported by the specification, claims, and figures as originally filed. No new matter is believed or intended to be involved.

Drawings Objection

In the Office Action dated 06/10/2008, the drawings were objected to under 37 C.F.R. 1.83(a), which requires that the drawings show every feature of the invention specified in the claims. The Office stated that the feature in claim 25 reciting that each loop is positioned adjacent to another portion of the loop to shield the unattached end from tissue contact must either be shown in the drawings or the feature canceled from the claim.

As shown in Applicant's FIG. 23 (reproduced below) the wire strand 316 of a wire ring device 312 terminates in a loop end 324. FIG. 23 illustrates that the unattached end of the loop is positioned adjacent to another portion of the loop to shield the unattached end from contact with the tissue wall. In view of this, Applicant respectfully submits that the drawings adequately illustrate the feature recited in claim 25. Accordingly, Applicant respectfully requests that the objection to the drawings under 37 C.F.R. 1.83(a) be withdrawn.



§112 Rejection

Claim 25 was rejected under 35 U.S.C. §112 as failing to comply with the written description requirement. The Office stated that claim 25 contained subject matter not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The Office referenced the language in claim 25 reciting that “the unattached end of each loop is positioned adjacent to another portion of the loop to shield the unattached end from tissue contact.”

As noted above with respect to the objection to the drawings, the above-noted subject matter recited in claim 25 is adequately supported by FIG. 23. In addition, paragraphs [0042] and [0065] provide further support for the above-noted subject matter recited in claim 25. The subject matter recited in claim 25 is thus described in the specification and shown in the drawings in such a way as to reasonably convey to one skilled in the relevant art that the inventors had possession of the claimed invention at the time the application was filed. Therefore, Applicant respectfully requests that the §112 rejection of claim 25 be withdrawn.

While Applicant has cited Applicant’s FIG. 23 and paragraphs [0042] and [0065] as providing adequate support for limitations recited in claim 25, Applicant does not intend for any of Applicant’s claims to be limited to the configurations shown in FIG. 23 or described in paragraphs [0042] and [0065]. Instead, Applicant intends for the present claims to be construed as broadly as permitted by the disclosure.

§102 Rejection

Claims 10, 19, 23, 24, and 30 were rejected under 35 U.S.C. 102(b) as being anticipated by Park (U.S. Pub. No. 2003/0120292). Under MPEP 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. In addition, the elements in the prior art reference must be arranged as required by the claim. MPEP 2131 (emphasis added).

Applicant submits that Park fails to teach or suggest all of the limitations recited in amended independent claim 10, particularly in the arrangement recited in the claim. For instance, amended independent claim 10 recites that “the woven tube comprises at least one strand having unattached ends, wherein the unattached ends each terminate in a respective loop, wherein the loops are configured to position the unattached ends away from tissue contact when the anastomotic device is in the deployed position.” Park fails to teach or suggest such limitations, among others, particularly in the arrangement required by amended claim 10.

Yet further, Park fails to teach each petal comprising “a petal tip flaring directionally outward away from the tissue walls when the anastomotic device is in the actuated position.” The Office cited FIG. 4F of Park as disclosing this limitation. Applicant respectfully disagrees with this characterization of FIG. 4F. FIG. 4F illustrates an anastomotic device during actuation, and not when the anastomotic device is in its actuated position. Therefore, FIG. 4F cannot possibly show “a petal tip flaring directionally outward away from the tissue walls when the anastomotic device is in the actuated position.” Applicant’s above assertion is further supported by Park requiring that its woven tube 10 be “forced to return to the flattened shape of FIG. 1” when deployed such that “the tissues of the both lumen walls are compressed between the petals of the flattened tube” (Park column 4, Lines 7-13, emphasis added).

For at least the reasons set forth above, Park fails to anticipate amended claim 10 in accordance with MPEP 2131. Applicant therefore respectfully requests that the rejection of claim 10 be withdrawn.

Applicant further notes that the pending dependent claims include additional limitations not taught or suggested in the art of record, thus forming independent basis for novelty.

### §103 Rejection

Claims 15, 17, 25-29 were rejected under 35 U.S.C. §103(a) as being obvious over Park in view of McNamara (U.S. 6,004,347). Under MPEP 2143.03, in order to establish a *prima facie* case of obviousness, the Office must give due consideration to all of the limitations of a claim. The Office must also sufficiently establish a motivation to combine or modify the teachings of the prior art in order to reach a claimed invention in accordance with MPEP

2143.01. Obviousness rejections “cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1395-97 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). For at least the reasons set forth below, Applicant respectfully submits that the combined art of record fails to render any of the present claims obvious.

Claims 15, 17, and 26 are canceled herein without intent to surrender any subject matter, and without prejudice to Applicant’s right to present the claims at a later date, thereby rendering the obviousness rejection of claims 15, 17, and 26 moot.

Applicant notes that claims 27-29 depend from amended independent claim 10. As noted above, Park fails to teach or suggest all of the limitations of amended claim 10. Applicant further submits that, even in combination with Park, the remaining cited reference fails to make up for such deficiencies of Park. Applicant therefore submits that the combined art of record does not teach or suggest all of the limitations of claim 10 in accordance with MPEP 2143.03. Accordingly, Applicant respectfully submits that the combined art of record does not render present claims 27-29 obvious in accordance with MPEP 2143, and respectfully requests that the rejection be withdrawn.

Further, it should be noted that McNamara actually teaches away from the present invention recited by amended claim 10, and therefore it is not proper to modify or combine McNamara with any other reference to obtain the present invention. MPEP 2145. The Office cited FIG. 7, col. 7 ll. 25-30 of McNamara as disclosing the strands having unattached ends that terminate in a loop such that the unattached ends are positioned adjacent to another portion of the loop to shield the unattached end from tissue contact. Applicant respectfully disagrees with the Office’s characterization of McNamara. McNamara teaches using hooks 40 that “aid in attaching the anchor 30 to the aorta wall to prevent migration after the device is implanted” (column 5, lines 62-64), and particularly teaches using “hooks 40 so that they will tend to more firmly dig into and bear against the vessel wall” (column 6, lines 3-8). This disclosure by McNamara teaches away from amended claim 10, which recites having the unattached ends of the strands respectively include a loop whose unattached end avoids making contact with any

tissue, let alone dig into any tissue. Consequently, McNamara should not be modified or combined with any other reference to obtain the invention recited in amended claim 10.

### Conclusion

While several distinctions have been noted over the art of record, Applicant notes that there are several other limitations recited in the present claims which are neither taught nor suggested by the art of record. Applicant expressly reserves all rights and arguments with respect to distinctions not explicitly noted herein. In addition, to the extent that the amendments constitute a narrowing of the claims, such narrowing of the claims should not be construed as an admission as to the merits of the prior rejections. Indeed, Applicant traverses the rejections and preserves all rights and arguments. To the extent that any particular statement or argument by the Office in the pending Office Action has not been explicitly addressed herein, the same should not be construed as an acquiescence or admission by the Applicant that such statements or arguments by the Office are accurate or proper.

Based on the foregoing, Applicant believes that all pending claims are in a condition for allowance. Accordingly, Applicant respectfully requests reconsideration and an early notice of allowance. Should the Examiner wish to discuss the amendments or arguments made herein, Applicant invites the Examiner to contact the undersigned at (513) 369-4811 or via e-mail at [aulmer@fbtlaw.com](mailto:aulmer@fbtlaw.com).

The Commissioner for Patents is hereby authorized to charge any deficiency or credit any overpayment of fees to Frost Brown Todd LLC Deposit Account No. 06-2226.

Respectfully Submitted,



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